

On August 18, 1993 appellant, a 46-year-old boiler plant operator working for the United States Air Force, filed a claim for benefits alleging that he injured his left knee in the performance of duty. The Office accepted the claim for left knee strain. Appellant subsequently obtained employment with the U.S. Postal Service as a mail handler. He filed additional claims for benefits which were accepted for right knee strain, left knee strain, left knee medial meniscus tear, left anterior cruciate ligament (ACL) tear and aggravation of ACL ligament graft. The

Office granted appellant schedule awards for 7 percent permanent impairment of the right lower extremity on the following dates and 19 percent permanent impairment of the left lower extremity. In a decision dated January 11, 2006, it found that appellant was not entitled to an additional award for left lower extremity impairment.

By letter postmarked May 9, 2008, appellant requested an oral hearing.

By decision dated May 29, 2008, the Office denied appellant's request for an oral hearing. It stated that his request was postmarked May 9, 2008, which was more than 30 days after the issuance of the Office's January 11, 2006 decision, and that he was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of and Office's final decision.¹ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.² The Office has discretion, however, to grant or deny a request that is made after this 30-day period.³ In such a case, it will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁴

ANALYSIS

Appellant's May 9, 2008 request for a hearing was postmarked more than 30 days after the Office's January 11, 2006 decision denying compensation for an additional schedule award. He is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and advised appellant that he could pursue his claim through the reconsideration process. Appellant may address the issue in this case by submitting new and relevant evidence to the Office with a request for reconsideration. The Board finds that the Office properly exercised its discretion in denying his request for a hearing. The Board will affirm the Office's May 29, 2008 decision denying appellant an oral hearing.

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. § 10.131(a)(b).

³ *William E. Seare*, 47 ECAB 663 (1996).

⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 29, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board